IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7041 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARSANJI THAKARSI SUKHADIA

Versus

MAMLATDAR AND KRUSHI PANCH

Appearance:

MR MA PAREKH for Petitioner

DS AFF.NOT FILED (R) for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

UNSERVED-REFUSED (R) for Respondent No. 3, 4, 5, 6, 7, 8, 9

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/03/2001

ORAL JUDGEMENT

The petitioner is aggrieved by the order passed

by the Mamalatdar & ALT, city and Taluka Ahmedabad on 9.10.1992 in Ganot Case No.44/92. The said order was passed in respect of Naroda Revenue Survey No.826/1 admeasuring 5 Acres and 17 Gunthas of land running in the names of Ataji Bhalaji and Pashiben Bhalaji. By virtue of said order the said piece of land is now vested in the Government on account of breach of condition of agreement.

2. The case of the petitioner is that in earlier Ganot Case No.31/89 decided on 1.4.1991 the petitioner has been held to be the deemed purchaser of Survey No.826/1 as a whole, admeasuring 10 Acres and 34 Gunthas. That order still survives and still the impugned order is passed without giving any audience to the petitioner.

3. The case of the opponents, on the other hand, as emerging from the affidavit-in-reply, is that the matter was proceeded with after issuing notice to necessary party. According to records, the property bearing S.No.826/1 part admeasuring 5 acres and 17 gunthas stands in the names of Ataji Bhalaji and Pashiben Bhalaji, Nasir Munir, Basir Munir, Karjan Munir, Bai Rehna, Wd/o Munir Abdulhusen, and all they were served with notices. The name of the petitioner nowhere appeared and therefore he was not required to be heard.

4. Heard the learned advocate Mr.M.A.Parekh for the petitioner and Ms.Punani, Ld.AGP for respondent Nos 1 and 2. Other respondents have chosen not to appear before this court as they refused to accept the service of notice of rule.

5. Mr.Parekh has reiterated the facts stated above and so also Ms.Punani, Ld.AGP.

6. The petition deserves to be allowed only on the ground that admittedly the order is passed passed in favour of the petitioner under section 32(g) of the Tenancy Act on 1.9.1991 in Ganot Case No.31/89 by virtue of which he has been held to be the deemed purchaser in respect of whole of S.No.826/1 admeasuring 10 acres and 34 gunthas. Admittedly the impugned order is passed in respect of part of the S.No.826/1 admeasuring 5 acres 17 gunthas by virtue of which the land is now vested in the Government. While passing the impugned order the petitioner who has right/interest in the property has not been heard. Therefore, the impugned order can not be permitted to stand.

7. The petition is allowed. The impugned order

passed in Ganot Case No.44/92 by the Mamalatdar & ALT City, Taluka Ahmedabad on 9.10.1992 is hereby quashed and set aside and the Mamalatdar & ALT, City, Taluka Ahmedabad is now directed to re-decide the case after giving due audience to the petitioner. The Mamalatdar & ALT, City, Taluka Ahmedabad shall decide the case strictly in accordance with law without being influenced by this order. Rule is made absolute accordingly with no order as to costs. Ad interim relief granted earlier stands vacated. Direct Service is permitted.

15.3.2001 (A.L.DAVE,J)